IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.576 OF 2005

Virendra Bhagwandas Shah & Anr. ...Appellants
Vs.
The State of Maharashtra ...Respondent

Mr.S.S.Shah i/b Maneksha & Sethna for the Appellants
Ms Geeta Mulekar, A.G.P.for the Respondent.
Mr.S.G.Surana, the Intervenor

CORAM: A.S.OKA, J.
DATED: MAY 5,2005.

P.C.:

. Not on board.

1. An Affidavit of the Appellant No.1 filed on behalf of the Appellants is taken on record and marked 'X' for identification. In the said Affidavit the Appellants have tendered unconditional apology for not impleading Vinayak Cooperative Housing Society Ltd. and one Shri Shashikant Atmaram Mahashilkar in the present suit. The said society and the said Mahashilkar were party Defendants in the earlier suit filed by the Appellants. The apology is accepted.

2. The Counsel appearing for the Appellants states that now the Appellants desire to amend the plaint for impleading the said society and Shri Mahashilkar as party Defendants. He has tendered on record the proposed amendment. The proposed amendment is marked 'Y' for identification. He states that the Appellants may be permitted to amend the plaint as per the draft amendment which is marked as 'Y'.

3. He also seeks permission to implead the said two parties

as Respondents to this Appeal. Liberty is granted to amend the Memorandum of Appeal and to implead the said parties as Respondent Nos.2 and 3. Mr.Surana appearing for Respondent No.2 waives service.

4. The learned Counsel appearing for the Appellants submitted that the Appellants have accepted their mistake and they have tendered apology and therefore they may be permitted to amend the plaint for impleading the said two parties as Defendants. Shri Surana appearing for the added Respondent No.2 (Vinayak Cooperative Housing Society Ltd.) states that the defect in the plaint cannot be permitted to be cured in this fashion.

5. In my view as the said two parties are claiming to be the allottees of the said suit property, the Appellants are required to amend the plaint in terms of draft which is taken on record and marked as 'Y'. The amendment is for the purposes of impleading the said two parties.

6. The learned Counsel for the Appellants submitted that the impugned order indicates that the prayer clauses (a) to (c) of the Notice of Motion for temporary injunction are rejected. He submitted that the prayers could not have been rejected while considering the limited prayer for grant of ad-interim relief. The prayers are rejected on two grounds, first is as the suit is barred by limitation and second is

that the Society i.e. added respondent No.2 herein is not made party. He submitted that the finding regarding bar of limitation could not have been recorded without giving an opportunity to the parties to lead evidence. He submitted that the Appellants are entitled to ad-interim reliefs.

7. The learned A.G.P. for the State Government states that on plain reading of the impugned order it is clear that what is rejected is the prayer for ad-interim relief in the Notice of Motion and the Notice of Motion is kept pending. Shri Surana appearing for the added Respondent No.2 states that considering the conduct of the Appellants no ad-interim relief can be granted in favour of the Appellants. He submitted that earlier suit filed by the Appellants has been dismissed and the Appellants attempted to obtain ad-interim relief in the present suit without impleading his client as party Defendant.

8. On plain reading of the impugned order, it appears that the learned Trial Judge intended to refuse the ad-interim relief in favour of the Appellants. The Notice of Motion has been ordered to be registered by the impugned order.

9. The date on which the impugned order was passed, the alleged allottees Vinayak Co-operate Housing Society Ltd. and Shri Mahashilkar were not impleaded as parties and that is the ground given for rejecting the ad-interim relief. The

learned Trial Judge came to the conclusion that ad-interim relief could not be granted when alleged allottees were not parties to the suit.

10. In my view, the prayer for ad-interim relief was rightly rejected by the Trial Court as the grant of ad-interim relief would have certainly affected the added Respondents who were not made parties to the suit. The finding regarding bar of limitation is not conclusive as it is only a tentative finding recorded for considering the prayer for grant of ad-interim relief. If the Appellants want to pray for any ad-interim relief in the Notice of Motion, the Appellants will have to make a fresh application for grant of ad-interim relief in the said Notice of Motion after carrying out amendment to the plaint and after serving a notice on the added parties. Only with a view to permit the Appellants to do so, I am extending the ad-interim relief granted on 29th April 2005 for a limited period.

11. Hence I pass the following order :

(i) The Appellants are permitted to carry out the amendment to the plaint in terms of draft amendment marked as 'Y' for identification. The Amendment to be carried out within one week from today.

(ii) It is clarified that by the impugned order, prayer for

ad-interim relief in the Notice of Motion has been rejected against the Respodnent No.1 (State of Maharashtra) and the Notice of Motion is still pending.

(iii) The Appellants will be free to apply for ad-interim relief in the pending Notice of Motion after giving notice to the new added Respondents.

(iv) It is made clear that all contentions of the added Respondents including bar of limitation and contention based on effect of non-impleadment of the said Respondents are expressly kept open.

(v) Ad-interim relief granted by this Court on 29th April 2005 will continue to operate till 25th May 2005.

(vi) Appeal from Order is disposed of in above terms with no order as to costs.

Judge.